UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

OCT - 3 1991

Mr. Stergios Spanos
New Hampshire Department of Environmental Services
Hazardous Waste Compliance Section
6 Hazen Drive
Concord, NH 03301-6509

Dear Stergios:

This letter is a followup to our telephone conversation on September 20, 1991, to request Region I's interpretation of the generator tank requirements cited in the "Inspection Procedures" section of Appendix III, Table III-1, page 13 of the RCRA Inspection Manual. Specifically, you requested an interpretation of paragraph three on page 13 which states that less-than-90-day hazardous waste storage tanks must be emptied every ninety days by a generator.

Your request was prompted by a specific tank inspection conducted by the New Hampshire Department of Environmental Services (NH DES) at a generator facility. During this inspection, you stated that New Hampshire inspectors observed a generator storing hazardous waste in a six thousand gallon capacity tank.

Your inspection determined that the hazardous waste tank was never completely emptied. This determination was based on a review of the hazardous waste manifests, waste inventory logs, and statements by the generator. In these statements, the generator explained that capacity of the existing storage tank (six thousand gallons) exceeded the capacity of the vehicle (four thousand gallons) used to transport the hazardous waste off-site.

As a result of your findings described above, you believe a conflict exists with Appendix III, Table III-1, page 13 of the RCRA Inspection Manual. Specifically, you believe that the hazardous waste that remains in the storage tank after manifesting violates the RCRA Inspection Manual guidance that states that hazardous waste storage tanks must be emptied every ninety days by a generator.

Region I believes the ninety day "emptying" requirement refers to the **hazardous waste** placed in a tank. This section of the RCRA Inspection Manual only refers to generator requirements. To maintain generator status, hazardous waste must be stored for less than ninety days. The intent of this requirement is to determine if a facility is operating as a generator.

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The Region's interpretation is further supported by the RCRA Inspection Manual which references 40 C.F.R. §§ 262.34(a-c) in the "Inspection Procedures" section contained in Appendix III, Table III-1 on page 13. These requirements exempt a facility from a RCRA permit provided **hazardous wastes** are stored for less than 90 days on-site and the containers/tanks used to store the wastes conform to specific marking and labeling requirements.

For the situation you have presented, the total cumulative volume of the manifested shipments for a ninety day period must be equal or greater than the total cumulative volume of hazardous waste generated and stored in the tank system for the ninety day period **preceding** those shipments to retain the conditional exemption.

If hazardous wastes were found to be stored for greater-than-90 days, Appendix III, Table III-1, page 87 (Subpart J - Interim Status) or page 130 (Subpart J - Permitted Unit) of the RCRA Inspection Manual would apply.

Please call me if you have any question or if I can provide any assistance. My telephone number is (617) 573-5759.

Sincerely,

Kenneth B. Rota
Environmental Scientist
RCRA Support Section

Mr. Charles Fox, Jr.
Candia, New Hampshire 03034

Dear Mr. Fox:

This letter is in response to your letter of September 17, 1991, regarding the Kinnicaum Fish and Game Club on Palmer Road in Candia, New Hampshire. In your letter you relayed your concern with the Club's practice of shooting lead bullets into a mound of earth. You also indicated that the EPA should take some action at the Club to "clean up the present situation and make provisions for the future protection of the site from further pollution."

First, let me just take this opportunity to thank you for voicing your concerns. It is through concerned and conscientious citizens such as yourself that EPA is able to make great strides in achieving its environmental protection goals. However, the EPA has previously investigated the applicability of the Resource Conservation and Recovery Act (RCRA) regulations to shooting ranges. EPA has determined that the discharge of ball and sport ammunition at shooting ranges is not considered a hazardous waste or solid waste activity falling under the jurisdiction of RCRA.

In a letter dated September 6, 1988 from Sylvia K. Lowrance, the Director of the EPA Office of Solid Waste to Ms. Jane Magee the Assistant Commissioner for Indiana's Solid and Hazardous Waste Management, EPA addressed the issue of the applicability of RCRA to shooting ranges. In that letter, Ms. Lowrance stated EPA's position as follows:

The discharge of ball and sport ammunition at shooting ranges does not, in our opinion, constitute hazardous waste disposal. This is because we do not consider the rounds to be discarded, which is a necessary criterion to be met before a material can be considered a solid waste and, subsequently, a hazardous waste. Rather, the shooting of bullets is within the normal and expected use pattern of the manufactured product. This interpretation extends to the expended cartridges and unexploded bullets that fall to the ground during the shooting exercise. The situation, in our mind, is analogous to the use of pesticides whereby the expected, normal use of a pesticide may result in some

discharge to the soils. This is a discharge incident to normal product use and is not considered a hazardous or solid waste activity falling under the jurisdiction of RCRA.

EPA Region I appreciates your interest in this matter. If you have any questions or require any further information please contact Richard M. Filosa of the Waste Management Division at (617) 573-5777.

Sincerely,

Julie Belaga
Regional Administrator

bcc:Mary Jane O'Donnell, EPA-WMD
Richard M. Filosa, EPA-WMD

5. In a slightly revised scenario, can spills of RCRA wastes be absorbed with absorbents and then this absorbent be disposed of as RCRA Hazardous Waste in bulk to a RCRA permitted landfill?

Thank you in advance for replying to this clarification of the regulations.

Sincerely,

Daniel Gillingham
RCRA Compliance Manager

DG/blr

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

August 5, 1991

Daniel Gillingham, RCRA Compliance Manager
Franklin Environmental Services, Inc.
185 Industrial Road
P.O. Box 617
Wrentham, MA 02093

Dear Mr. Gillingham:

This letter is in response to your July 12, 1991 letter in which you are requesting Region I's interpretation of the proper hazardous waste classification of soils that are found to have measurable levels of solvents listed in 40 C.F.R. § 261.31 or § 261.33(f). Your concern is focused on the selection of the appropriate EPA waste code (i.e. F, U or D codes) for contaminated soils where the source of the contamination can not be ascertained (either physically or historically).

This issue has generally, in the past, been determined by either EPA or the authorized State environmental agency on a case by case basis. All Region I States are authorized to administer their analog to the federal requirements found at 40 C.F.R. Part 261; these States may support a rationale different from the one outlined below. There are currently no OSWER directives or other guidance documents that pertain to this issue. Region I is, therefore, identifying herein the criteria and issues that Franklin Environmental Services, Inc. should be aware of when classifying soils of this nature.

Applicability of F-Codes to Contaminated Soils

Generally speaking, if a contaminated soil has detectable levels of any of the constituents listed in 40 C.F.R. § 261.31 and there is historical documentation that indicates that these levels can be attributed, in part or in whole, to spent solvents, the appropriate F-code should be applied (i.e. F002, F003, F005, etc.). Region I, in assessing the classification of a contaminated soil, would not necessarily employ a "worst case" scenario (i.e., most stringent treatment standard pursuant to 40 C.F.R. Part 268) in the absence of historical or physical data. The conclusiveness of this data and the specifics of the case would be a deciding factor in determining whether this classification is warranted or not.

classification of contaminated soils have, and will continue to be the key factor in applying appropriate EPA waste codes to them. Therefore, applying this interpretation in a purely quantitative aspect would be inappropriate.

If you have any additional questions or concerns on this matter, please contact either John Gauthier at (617) 573-9629 or Robert Cianciarulo at (617) 573-5778.

Sincerely,

Merrill S. Hohman, Director
Waste Management Division

cc: F. Ciavattieri
J. Blumstein
WMD Branch Chiefs
RCRA Section Chiefs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

8/91

Dear Automotive Service Station Owner:

This summary is intended to provide an update on the status of some of the current regulatory requirements for automotive service industry (ASI) wastes that may now be hazardous as a result of the Toxicity Characteristic (TC) rule. To date, some of these issues have been resolved. Others are in the process of being determined at the State, EPA Regional and Headquarters levels.

Background Information

Generally speaking, solid wastes (as defined in 40 CFR § 261.2) are hazardous if they are either specifically listed in 40 CFR Part 261, Subpart D, or if they exhibit a characteristic of a hazardous waste (i.e. ignitability, corrosivity, reactivity or toxicity) as defined in 40 CFR Part 261, Subpart C. The focus of this summary will deal with changes that have been enacted to the **characteristic of toxicity** and what affect they have had on some of the common wastes generated by the ASI.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) to the Resource Conservation and Recovery Act of 1976 (RCRA) mandated that EPA reassess the criteria and test method that determine the characteristic of toxicity. The former test, the Extraction Procedure Toxicity Characteristic (EP Tox), which had been the test used since 1980 to define toxicity, was comprised of eight heavy metals and six pesticides/herbicides (EPA Hazardous Waste Codes D004 through D017).

On March 29, 1990 (as published in Volume 55 of the Federal Register (FR), beginning on page 11798), EPA expanded the list of characteristic toxic wastes and incorporated a new test method to replace the EP Tox method. The original list of fourteen constituents had twenty-five new organic constituents (EPA Hazardous Waste Codes D018 -D043) added to it. These revisions also introduced the Toxicity Characteristic Leaching Procedure, or TCLP as the replacement test method for EP Tox, to determine the toxic characteristic of a waste.

These revisions, referred to as the Toxicity Characteristic, or TC Rule required affected new generators and treatment, storage and disposal (TSD) facilities to submit notifications, applications and/or modifications at various set dates in order to continue managing these newly toxic wastes. Generally speaking, large quantity generators and treatment, storage and disposal facilities had to begin complying with the TC rule by September 25, 1990, and small quantity generators had until March 25, 1991 to comply.

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require generators to comply with hazardous waste regulations regardless of the quantity of hazardous waste generated. Since all of the States in Region I are authorized for, at a minimum, the base RCRA program, this could mean that many CESQGs would need to comply with many of the standards applicable to generators of larger quantities. Consulting your appropriate State environmental agency is essential before determining whether the Federal CESQG status is applicable to your business or not.

Waste Oil

Current Federal regulations pertaining to waste oil, in general, have not been affected by the TC rule. Waste oils that are handled in accordance with 40 CFR Part 266 or 40 CFR § 261.6(a)(3)(iii) are currently not Federally regulated as hazardous wastes. These provisions state, generally, that waste oils that are to be burned for energy recovery or recycled in other manners are not regulated as a hazardous waste. Many States, however, regulate waste oil as a special waste and have established additional requirements regarding handling, transportation, storage and disposal.

Manners of recycling that may be consistent with the above mentioned citations are re-refining waste oil into fuels, filtration of waste oil to regenerate usable oil, reusing waste oil as a lubricant, burning waste oil in on-site space heaters (that meet the requirements of § 266.41(b)(2)(iii)), or sending waste oil to an approved facility that will burn the waste oil in order to recover energy (i.e. produce heat, steam or electricity). This is a generalization of the methods of waste oil management that would be consistent, however there are additional constraints to some of these methods that should be reviewed in more detail. For a more detailed discussion on waste oil management, refer to the November 29, 1985 Federal Register publication (50 FR 49164).

Perceived "recycling" of used oil that would be deemed methods of illegal disposal and therefore potentially subject to hazardous waste regulation are road oiling for dust suppression, disposal in a solid waste landfill, disposal through a sewage, septic or dry well system or incineration with no means of energy recovery.

The EPA has recently promulgated new regulations for facilities that burn hazardous waste in boilers and industrial furnaces (BIFs). These regulations (referred to as the BIF Rule), effective August 21, 1991 will not affect used oil that is burned on-site in waste oil "space heater"-type units that meet the requirements of § 266.41(b)(2)(iii). Simply stated, this regulation requires space heaters to be of less than 500,000 BTU per hour in capacity, [illegible] to be generated from the service station and its individual [illegible] only; and combustion gases to be vented to the outside. [illegible] conditions the [illegible] would be subject to RCRA permitting.

above constituents. Though indicative of widespread contamination through use, the fact that only half of the samples failed the TCLP demonstrates that all automotive antifreeze may not be a hazardous waste once spent. EPA will continue to assess this issue and determine a proper response. At the present time, as always, generators of spent automotive antifreeze (or any other suspected solid wastes) should determine if it is a hazardous waste as required by 40 CFR § 262.11. If a generator determines that his spent antifreeze exhibits a characteristic of a hazardous waste, he should handle it accordingly.

EPA Headquarters' Office of Solid Waste is overseeing this issue. In the absence of additional information, Region I is emphasizing the importance of a generator's responsibility to make a proper characterization of all waste streams.

Chlorofluorocarbon (CFC) Refrigerants

Because of the TC rule, spent CFC (Freon^{tm}) refrigerants would be considered hazardous for detectable levels of carbon tetrachloride and chloroform. Since this waste is in the gaseous state at standard temperature and pressure, the potential for venting rather recycling of spent CFCs could increase if regulation as a hazardous waste is imposed. Since there has been an increased incentive in recent years to recycle CFCs for reclaim and reuse, imposing hazardous waste regulations on the storage of these containerized CFCs could prove to be a disincentive and subsequently encourage venting of CFCs to the atmosphere. CFCs are a known contributor to the reduction of stratospheric ozone. Therefore, EPA suspended the application of the TC to spent CFCs from totally enclosed heat exchange equipment that are reclaimed for further use.

CFC refrigerants that are recaptured and reclaimed for future use are exempt from the TC Rule pursuant to 40 CFR § 261.4(b)(12) as published in 56 FR 5910 on February 13, 1991.

If you have additional questions or concerns on these issues, you may contact me at (617) 573-9629.

Sincerely,

John K. Gauthier,
Chemical Engineer
Waste Management Division

August 1991

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

June 11, 1991

Mr. Philip Smith, V.P. Sales & Marketing
Tri-S Incorporated
25 Pinney Street
Ellington, CT 06029

Dear Mr. Smith:

I am responding to your letter sent to the Regional Administrator on March 14, 1991. I would first like to apologize for the delay in issuing a reply to your request. In your letter, you are requesting an EPA determination on whether the fluorescent bulbs that you are bidding for disposal of would be deemed a hazardous waste.

Based on the information outlined in your letter it appears that you are correct in assuming that the bulbs would be a hazardous waste by exhibiting the toxicity characteristic (TC) for mercury at levels in excess of those outlined in 40 C.F.R. § 261.24. You stated that this determination was made by testing a crushed bulb via the TCLP method. This appears to be appropriate protocol, and the applicable EPA waste code would indeed be D009 for this waste.

The fact fluorescent bulbs fail the TC for mercury is consistent with information that is being compiled by EPA at this time. In addition to mercury, levels of cadmium that exceed the regulatory levels for the TC have also been reported. Whether all fluorescent bulbs would be hazardous waste (for mercury or cadmium levels) or not when they are to be disposed of, depends upon the type, manufacturer, and age of the bulbs. In the absence of definitive knowledge of the levels of these metals attributable to each bulb, testing via the TCLP would be the recommended procedure to make that determination. The state of California, in fact, regulates fluorescent bulbs as a hazardous waste.

Therefore, based on your letter, and in the absence of additional data, the fluorescent bulbs should be handled and disposed of as a hazardous waste. If you have any additional questions or concerns, please do not hesitate to call me at (617) 573-9629.

Sincerely,

John K. Gauthier,
Chemical Engineer
Waste Management Division

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

5/21/91

Daniel Gillingham
RCRA Compliance Officer
Franklin Environmental Services, Inc.
185 Industrial Road
P.O. Box 617
Wrentham, MA 02093

Dear Mr. Gillingham:

This letter is written in response to your April 3, 1991 request for clarification concerning the "empty container" regulations as they relate to the residues and "heels" of hazardous waste that typically remain in a bulk liquid tanker after off-loading.

Question:

"If a truck is off-loaded and, after completion of off-loading, the tank now meets the definition of an "empty container" of 40 CFR 261 (i.e.; Assuming a 5,000 gallon tanker, there is approximately ten gallons of residual waste remaining in the truck that cannot be further removed by common procedures usually associated with off-loading trucks (267.7(b)(i)). This ten gallons is less than the "0.3%" criteria of the empty container definition.) Would this truck then be allowed under current regulations to go to a commercial truck wash facility whose discharge is regulated by the Clean Water Act to completely wash out its remaining residuals so that the next load the truck carried did not become cross contaminated with any of the residuals, or would this residue still be considered a hazardous waste and this washing-out at a commercial truck wash facility not be allowed under RCRA regulations as the truck wash facility is not a permitted RCRA treatment or disposal facility."

Response:

Region I believes there are additional issues raised by this question which must be addressed to completely answer your hypothetical question. The proper regulatory citation for empty containers is 40 C.F.R. § 261.7(b)(1)(i). To answer the first part of your question, the "empty" tanker truck is not prohibited under RCRA to go to a commercial truck wash facility. Although the tanker may be considered legally "empty" under RCRA, this does not pre-empt or replace the definition of "empty" as defined by the Department of Transportation regulations under 49 C.F.R. which generally recommends a steam cleaning procedure as the minimal requirement to qualify as an "empty" tank.

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The actual rinsing/cleaning procedure, however, raises a number of regulatory issues. For example, if the rinseate exhibits the characteristic of a hazardous waste, the entire volume is subject to the applicable provisions of RCRA. Upon meeting the definition of a hazardous waste, the generator must be determined. If your employee conducts the cleaning, you become the generator of a hazardous waste. Likewise, if the commercial truck wash facility personnel conducts the cleaning/rinsing, the facility becomes the generator of a hazardous waste (if it exhibits the characteristic) unless the facility acts as your agent, in which case, you would remain the generator.

With respect to the portion of your question that states the truck washing facility has a regulated discharge under the Clean Water Act, if the allowable concentration limits for hazardous waste/constituents found in the "regulated" discharge can be achieved in a manner not constituting improper dilution, the discharge would not be regulated under RCRA.

Since the cleaning/rinsing procedure is a waste generation process, if the waste generated is hazardous, the waste will become subject to the land disposal restrictions requirements (unless the waste is regulated as a TCLP hazardous waste which is not currently subject to land disposal restrictions requirements). Tank cleaning/rinsing procedures which are not beneficial and do not contribute to the cleaning process are considered to be an improper dilution of land disposal restricted wastes.

Question:

"In a second scenario, if the ten gallons or less of residue in the 5,000 gallon tanker would classify the tank car as "empty" under 40 CFR 261.7, then if the tank car was brought to another site to be completely purged so as to prevent future cross contamination, would any of the waste generated from this cleaning be considered a hazardous waste due to the "mixture" and/or "derived from rules if the residue was from a "listed" waste that the tank car originally transported? Or, since the residue being washed out is from an "empty" tank, the "mixture" and "derived from" rule have no application and the only criteria that needs to be considered is if the resultant mixture exhibits any characteristics of a hazardous waste from 40 CFR 261.21, .22, .23 and .24"

Response:

Region I believes that any tank car waste generated in the manner as described above from a tanker which is legally "empty" under RCRA can only be classified as hazardous waste based on the characteristic of the resultant mixture. A hazardous waste cannot be "derived from" or qualify as a "mixture" from a tanker which is legally "empty".

Question:

"The third question revolves around the manifesting requirements if a tank car does not meet the definition of "empty" when off-loaded at the TSDF. Does this situation require the TSDF to become the generator for a shipment back to the original generator where it can be cleaned and purged, or can it travel back on the original manifest with a notation in the Descrepancy Section of how many gallons not able to be off-loaded."

Response:

Region I believes that 40 C.F.R. § 263.21(a) clearly states that the transporter must deliver the entire quantity of hazardous waste accepted for shipment to the designated TSD or alternate designated TSD or revise the manifest in accordance to the generator's instructions for the entire volume of waste received.

For those situations in which the off-loaded volume at the TSD is less than the initial volume received from the generator, if the tanker qualifies as legally "empty", Region I would consider the entire volume to be delivered for purposes of 40 C.F.R. § 263.21(a). A manifest discrepancy would be required in the appropriate section of the hazardous waste manifest.

If you have any questions concerning these responses, please contact Kenneth Rota of my staff at (617) 573-5759.

Sincerely,

FOR GML

Gerald M. Levy, Chief
MA Waste Management Branch